

SCHEDULES

SCHEDULE 14

Section 95

POLICE: COMPLAINTS

Introduction

- 1 The Police Reform Act 2002 is amended in accordance with this Schedule.

Membership and proceedings of Independent Police Complaints Commission

- 2 In section 9(2)(b) (minimum number of members of Commission), for “ten” substitute “five”.
- 3 In Schedule 2 (the Independent Police Complaints Commission), in paragraph 10 (proceedings), omit sub-paragraph (6).

Complaints about policing

- 4 Omit section 14 (direction and control matters).
- 5 (1) In section 29(1) (interpretation of Part 2), in the definition of “conduct” in subsection (1), for “and statements” substitute “, statements and decisions”.
- (2) In Schedule 3 (handling of complaints and conduct matters), in paragraph 4 (reference of complaints to the Commission), after sub-paragraph (7) insert—
- “(8) In a case where—
- (a) a complaint relates to a direction and control matter, and
- (b) there is no obligation under this paragraph for the appropriate authority to refer the complaint to the Commission,
- the appropriate authority may refer the complaint to the Commission under this paragraph only if the Commission consents.”.
- 6 In consequence of paragraph 4—
- (a) in section 10 (general functions of the Commission), omit subsection (8);
- (b) in section 13 (handling of complaints, conduct matters and DSI matters etc), omit “subject to section 14(1)”.

Power of local policing body to direct chief officer of police to comply with obligations

- 7 In section 15 (general duties of local policing bodies, chief officers and inspectors), after subsection (2) insert—
- “(2A) Subsection (2B) applies in a case where it appears to a local policing body that—
- (a) an obligation to act or refrain from acting has arisen by or under this Part,

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- (b) that obligation is an obligation of the chief officer of police of the police force which is maintained by the local policing body, and
- (c) the chief officer has not yet complied with that obligation, or has contravened it.

(2B) The local policing body may direct the chief officer to take such steps as the local policing body thinks appropriate.

(2C) The chief officer must comply with any direction given under subsection (2B).”.

Initial handling and recording of complaints

8 (1) In Schedule 3 (handling of complaints and conduct matters), paragraph 2 (initial handling and recording of complaints) is amended in accordance with sub-paragraphs (2) to (5).

(2) For sub-paragraph (1) substitute—

“(1) Where a complaint is made to the Commission, it shall give notification of the complaint to the appropriate authority.

(1A) But the Commission need not give that notification if the Commission considers that there are exceptional circumstances that justify its not being given.”.

(3) Omit sub-paragraph (4).

(4) In sub-paragraph (5)—

(a) in the words before sub-paragraph (a)—

(i) omit the words from “or the Commission” to “sub-paragraph (4)”;

(ii) omit “or, as the case may be, the Commission”;

(b) omit sub-paragraph (b) (and the word “or” preceding it).

(5) After sub-paragraph (7) insert—

“(8) Nothing in this paragraph shall require the recording by any person of any complaint about any conduct if that person considers that the complaint falls within a description of complaints specified in regulations made by the Secretary of State for the purposes of this paragraph.”.

(6) In consequence of the amendments made by sub-paragraphs (2) to (5)—

(a) in section 12(2) (complaints, matters and persons to which Part 2 applies), omit “, paragraph 2(4) of Schedule 3”;

(b) in section 29(1) (interpretation of Part 2), omit paragraph (b) of the definition of “recordable conduct matter”.

Handling of complaints by the appropriate authority

9 (1) In Schedule 3 (handling of complaints and conduct matters), for paragraph 6 (handling of complaints by the appropriate authority) substitute—

“6 (1) This paragraph applies where a complaint has been recorded by the appropriate authority.

- (2) But this paragraph does not apply to a complaint if it is one that has been, or must be, referred to the Commission under paragraph 4, unless the complaint is for the time being—
 - (a) referred back to the authority under paragraph 5, or
 - (b) the subject of a determination under paragraph 15.
- (3) Subject to paragraph 7, the appropriate authority shall determine whether or not the complaint is suitable for being subjected to local resolution.
- (4) If the appropriate authority determines that the complaint is suitable for being subjected to local resolution, it shall make arrangements for it to be so subjected.
- (5) If the appropriate authority determines that the complaint is not so suitable, it shall make arrangements for the complaint to be investigated by the authority on its own behalf.
- (6) A determination that a complaint is suitable for being subjected to local resolution may not be made unless the following conditions are both met.
- (7) The first condition is that the appropriate authority is satisfied that the conduct complained of (even if it were proved) would not justify the bringing of any criminal or disciplinary proceedings against the person whose conduct is complained of.
- (8) The second condition is that the appropriate authority is satisfied that the conduct complained of (even if it were proved) would not involve the infringement of a person's rights under Article 2 or 3 of the Convention (within the meaning of the Human Rights Act 1998).
- (9) In a case where this paragraph applies to a complaint by virtue of sub-paragraph (2)(b), a determination that the complaint is suitable for being subjected to local resolution may not be made unless the Commission approves the determination.
- (10) No more than one application may be made to the Commission for the purposes of sub-paragraph (9) in respect of the same complaint.
- (11) Sub-paragraph (9) (where applicable) is in addition to sub-paragraphs (6) to (8)."
- (2) In paragraphs 7(6)(a) and 16(1)(a) of that Schedule, for "paragraph 6(2)" substitute "paragraph 6(3)".
- (3) In section 22 (power of the Commission to issue guidance), in subsection (5)(c), omit sub-paragraph (ii) (and the word "and" at the end of sub-paragraph (i))."

Disapplication of requirements of Schedule 3 to 2002 Act

- 10 (1) Schedule 3 (handling of complaints and conduct matters) is amended in accordance with this paragraph.
- (2) In the italic heading that precedes paragraph 7 (dispensation by the Commission from requirements of Schedule 3 to 2002 Act), for "*Dispensation by the Commission from*" substitute "*Disapplication of*".

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- (3) Paragraph 7 is amended in accordance with the following provisions of this paragraph.
- (4) In sub-paragraph (1), omit “apply to the Commission, in accordance with the regulations, for permission to”.
- (5) After sub-paragraph (1) insert—
 - “(1A) But, in a case where paragraph 6 applies by virtue of paragraph 6(2)(a) or (b), the appropriate authority may not handle the complaint in whatever manner (if any) the authority thinks fit unless—
 - (a) the authority applies to the Commission, in accordance with the regulations, for permission to so handle the complaint, and
 - (b) the Commission gives permission.”.
- (6) For sub-paragraph (2) substitute—
 - “(2) The appropriate authority shall notify the complainant—
 - (a) that the appropriate authority has decided to handle the complaint as permitted by sub-paragraph (1) (in a case where the appropriate authority is not required to apply for permission under sub-paragraph (1A) to so handle the complaint); or
 - (b) about the making of the application under sub-paragraph (1A) (in a case where the appropriate authority makes such an application).”.
- (7) In sub-paragraph (5)—
 - (a) for the words before paragraph (a) substitute—
 - “(5) Where the complaint is to be handled in whatever manner (if any) the authority thinks fit (whether or not the Commission’s permission is needed), the authority—”;
 - (b) in sub-paragraph (b), for “but for the permission” substitute “if it were not proceeding in accordance with this paragraph”.
- (8) In sub-paragraph (6)—
 - (a) after “Where” insert “the appropriate authority applies to the Commission under sub-paragraph (1A) and”;
 - (b) omit “under this paragraph”.

Conduct matters arising in civil proceedings

- 11 (1) In Schedule 3 (handling of complaints and conduct matters), paragraph 10 (conduct matters arising in civil proceedings) is amended in accordance with sub-paragraphs (2) to (4).
- (2) In sub-paragraph (3), for “record that matter” substitute “determine whether the matter is one which it or he is required to refer to the Commission under paragraph 13 or is one which it would be appropriate to so refer”.
- (3) For sub-paragraph (4) substitute—
 - “(4) In a case where the appropriate authority determines that the matter is one which it or he is required to refer to the Commission under paragraph 13,

or is one which it would be appropriate to so refer, it or he shall record the matter.

(4A) In any other case, the appropriate authority shall determine whether the matter falls within a description of matters specified in regulations made by the Secretary of State for the purposes of this sub-paragraph.

(4B) In a case where the appropriate authority determines that the matter does not fall within such a description, it or he shall record the matter.

(4C) In any other case, the appropriate authority may (but need not) record the matter.

(4D) In a case where the appropriate authority—
 (a) records a matter under this paragraph, and
 (b) is not required to refer the matter to the Commission under paragraph 13 and does not do so,
 the appropriate authority may deal with the matter in such other manner (if any) as it or he may determine.”.

(4) In sub-paragraph (5), for “sub-paragraph (3)” substitute “sub-paragraph (4) or (4B)”.

(5) In paragraph 16(2)(a) of Schedule 3, for “10(4)(b)” substitute “10(4D)”.

Recording etc of conduct matters in other cases

12 (1) In Schedule 3 (handling of complaints and conduct matters), paragraph 11 (recording etc of conduct matters in other cases) is amended in accordance with sub-paragraphs (2) to (4).

(2) In sub-paragraph (1)—
 (a) for the words before paragraph (a) substitute—

“(1) This paragraph applies where—”;

(b) omit the words after paragraph (b).

(3) For sub-paragraph (3) substitute—

“(3) The appropriate authority must determine whether the matter is one which it or he is required to refer to the Commission under paragraph 13, or is one which it would be appropriate to so refer.

(3A) In a case where the appropriate authority determines that the matter is one which it or he is required to refer to the Commission under paragraph 13, or is one which it would be appropriate to so refer, it or he shall record the matter.

(3B) In any other case, the appropriate authority shall determine whether the matter falls within a description of matters specified in regulations made by the Secretary of State for the purposes of this sub-paragraph.

(3C) In a case where the appropriate authority determines that the matter does not fall within such a description, it or he shall record the matter.

(3D) In any other case, the appropriate authority may (but need not) record the matter.

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(3E) In a case where the appropriate authority—

- (a) records a matter under this paragraph, and
- (b) is not required to refer the matter to the Commission under paragraph 13 and does not do so,

the appropriate authority may deal with the matter in such other manner (if any) as it or he may determine.”.

(4) In sub-paragraph (4), for “sub-paragraph (1)” substitute “sub-paragraph (3A) or (3C)”.

(5) In paragraph 16(2)(a) of Schedule 3, for “11(3)(b)” substitute “11(3E)”.

Power to discontinue an investigation

13 (1) Schedule 3 (handling of complaints and conduct matters) is amended in accordance with this paragraph.

(2) In the italic heading that precedes paragraph 21 (power of the Commission to discontinue an investigation), omit “*of the Commission*”.

(3) Paragraph 21 is amended in accordance with the following provisions of this paragraph.

(4) For sub-paragraph (1) substitute—

“(1) The Commission may by order require the discontinuance of the investigation of a complaint or matter if (whether on the application of the appropriate authority or otherwise) it appears to the Commission that—

- (a) the complaint or matter is of a description specified in regulations made by the Secretary of State for the purposes of this paragraph, and
- (b) discontinuance of the investigation is within the Commission’s power.

(1A) The appropriate authority that is investigating a complaint or matter may discontinue the investigation if it appears to that authority that—

- (a) the complaint or matter is of a description specified in regulations made by the Secretary of State for the purposes of this paragraph, and
- (b) discontinuance of the investigation is not within the Commission’s power.

(1B) For the purposes of this paragraph—

- (a) discontinuance of the investigation of a complaint is within the Commission’s power if—
 - (i) the investigation is being undertaken by the appropriate authority on its own behalf and the complaint is one required to be referred to the Commission under paragraph 4; or
 - (ii) the investigation is under the supervision or management of the Commission;

- (b) discontinuance of the investigation of a matter other than a complaint is within the Commission's power if the investigation is under the supervision or management of the Commission.”.

(5) After sub-paragraph (3) insert—

“(3A) Where the appropriate authority discontinues an investigation under sub-paragraph (1A), the appropriate authority shall give notification of the discontinuance—

- (a) to every person entitled to be kept properly informed in relation to the investigation under section 21; and
- (b) in a case where the investigation that is discontinued is an investigation of a complaint, to the complainant.”.

(6) In sub-paragraph (4), for “in accordance with this paragraph” substitute “in accordance with an order under sub-paragraph (1)”.

(7) After sub-paragraph (5) insert—

“(6) Where an investigation of a complaint, recordable conduct matter or DSI matter is discontinued in accordance with sub-paragraph (1A)—

- (a) the appropriate authority may take any such steps of a description specified in regulations made by the Secretary of State as he or it considers appropriate for purposes connected with the discontinuance of the investigation; and
- (b) subject to the preceding paragraphs, neither the appropriate authority nor the Commission shall take any further action in accordance with the provisions of this Schedule in relation to that complaint or matter.”.

Duties with respect to disciplinary proceedings

14 (1) Schedule 3 is amended in accordance with this paragraph.

(2) In paragraph 23 (action by the Commission in response to an investigation report under paragraph 22), in sub-paragraph (6)(a), after sub-paragraph (i) insert—

“(ia) whether or not any such person's performance is unsatisfactory, and”.

(3) In paragraph 24 (action by the appropriate authority in response to an investigation report under paragraph 22), in sub-paragraph (6)(a), after sub-paragraph (i) insert—

“(ia) whether or not any such person's performance is unsatisfactory, and”.

(4) In paragraph 25 (appeals to the Commission with respect to an investigation)—

- (a) in sub-paragraph (2)(ba), after “answer” (in the second place) insert “or that such a person's performance is, or is not, unsatisfactory”;
- (b) in sub-paragraph (3), after sub-paragraph (za) insert—
 - “(zb) sets out whether the appropriate authority has determined any such person's performance is, or is not, unsatisfactory;”;
- (c) in sub-paragraph (5)(c)(i), after “sub-paragraph (3)(za)” insert “or (zb)”;
- (d) in sub-paragraph (9), in the words before sub-paragraph (a), for “considers appropriate or” substitute “considers appropriate, or determines that the

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appropriate authority has not made a determination as to whether a person's performance is or is not unsatisfactory, or determines that the appropriate authority".

(5) In paragraph 27 (duties with respect to disciplinary proceedings), in sub-paragraph (3)—

(a) after sub-paragraph (za) insert—

“(zb) that the person's performance is, or is not, unsatisfactory;”;

(b) in sub-paragraph (a), after “conduct” insert “, efficiency or effectiveness”;

(c) in sub-paragraph (b), after “conduct” insert “, efficiency or effectiveness”.

Rights of appeal

15 Schedule 3 (handling of complaints and conduct matters) is amended in accordance with the following paragraphs of this Schedule.

16 In paragraph 3 (failures to notify or record a complaint), after sub-paragraph (3) insert—

“(3A) But the complainant has no right of appeal under sub-paragraph (3) in either of the following cases.

(3B) The first case is where, by virtue of paragraph 2(7), there is no requirement to record the complaint.

(3C) The second case is where—

(a) the complaint relates to a direction and control matter, and

(b) the appeal relates to a failure by a local policing body.”.

17 (1) Paragraph 7 (dispensation by the Commission from requirements of Schedule 3 to 2002 Act) is amended in accordance with this paragraph.

(2) After sub-paragraph (7) insert—

“(8) The complainant shall have a right of appeal to the relevant appeal body against any decision by the appropriate authority under this paragraph to handle the complaint otherwise than in accordance with this Schedule or to take no action in relation to it.

(9) But the complainant has no right of appeal in either of the following cases.

(10) The first case is where the appeal relates to a decision for which the Commission has given permission under this paragraph.

(11) The second case is where the complaint relates to a direction and control matter.

(12) On an appeal under this paragraph, subject to sub-paragraphs (13) and (14), the relevant appeal body shall—

(a) determine whether any decision taken by the appropriate authority under this paragraph should have been taken in the case in question; and

(b) if the relevant appeal body finds in the complainant's favour, give such directions as the relevant appeal body thinks appropriate to the local policing body or chief officer as to the action to be taken

for handling the complaint in accordance with this Schedule or handling it otherwise than in accordance with this Schedule; and it shall be the duty of a local policing body or chief officer to comply with any directions given under paragraph (b).

(13) Sub-paragraph (12) does not apply in a case where a particular chief officer of police is—

- (a) the person in respect of whose decision the appeal is made under this paragraph, and
- (b) the relevant appeal body in relation to the appeal.

(14) In such a case—

- (a) the appeal shall determine whether any decision taken by the appropriate authority under this paragraph should have been taken in the case in question; and
- (b) if the appeal finds in the complainant's favour, the chief officer of police must take such action as the chief officer thinks appropriate for handling the complaint in accordance with this Schedule or handling it otherwise than in accordance with this Schedule.”.

18 For paragraph 9 and the italic heading that precedes it (Appeals relating to local resolution) substitute—

“Appeals relating to complaints dealt with other than by investigation

8A (1) The complainant shall have a right of appeal to the relevant appeal body against the outcome of any complaint that is—

- (a) subjected to local resolution, or
- (b) handled otherwise than in accordance with this Schedule.

(2) But the complainant has no right of appeal if the complaint relates to a direction and control matter.

(3) On an appeal under this paragraph, subject to sub-paragraphs (4) and (5), the relevant appeal body shall—

- (a) determine whether the outcome of the complaint is a proper outcome; and
- (b) if the relevant appeal body finds in the complainant's favour, give such directions as the relevant appeal body thinks appropriate to the appropriate authority as to the action to be taken in relation to the complaint;

and it shall be the duty of the appropriate authority to comply with any directions given under paragraph (b).

(4) Sub-paragraph (3) does not apply in a case where a chief officer of police is the relevant appeal body in relation to the appeal.

(5) In such a case—

- (a) the appeal shall determine whether the outcome of the complaint is a proper outcome; and
- (b) if the appeal finds in the complainant's favour, the chief officer of police must take such action as the chief officer thinks appropriate in relation to the complaint.”.

- 19 (1) Paragraph 21 (power of the Commission to discontinue an investigation) is amended in accordance with this paragraph.
- (2) After sub-paragraph (6) (inserted by paragraph 13(7) of this Schedule) insert—
- “(7) The complainant shall have a right of appeal to the relevant appeal body against any decision by the appropriate authority under sub-paragraph (1A) to discontinue the investigation of the complaint.
- (8) But the complainant has no right of appeal if the complaint relates to a direction and control matter.
- (9) On an appeal under this paragraph, subject to sub-paragraphs (10) and (11), the relevant appeal body shall—
- (a) determine whether any decision taken by the appropriate authority under this paragraph should have been taken in the case in question; and
- (b) if the relevant appeal body finds in the complainant’s favour, give such directions as the relevant appeal body thinks appropriate to the local policing body or chief officer as to the action to be taken for investigating the complaint;
- and it shall be the duty of a local policing body or chief officer to comply with any directions given under paragraph (b).
- (10) Sub-paragraph (9) does not apply in a case where a particular chief officer of police is—
- (a) the person in respect of whose decision an appeal is made under this paragraph, and
- (b) the relevant appeal body in relation to the appeal.
- (11) In such a case—
- (a) the appeal shall determine whether any decision taken by the appropriate authority under this paragraph should have been taken in the case in question; and
- (b) if the appeal finds in the complainant’s favour, the chief officer of police must take such action as the chief officer thinks appropriate for investigating the complaint.”.
- 20 (1) In the italic heading that precedes paragraph 25 (appeals to the Commission with respect to an investigation), omit “*to the Commission*”.
- (2) Paragraph 25 is amended in accordance with the following provisions of this paragraph.
- (3) In sub-paragraph (2)—
- (a) in the words before sub-paragraph (a), for “to the Commission” substitute “to the relevant appeal body”;
- (b) in the words after sub-paragraph (d)—
- (i) for “Commission” substitute “relevant appeal body”;
- (ii) after “this paragraph” insert “(except that the duty to notify the appropriate authority does not apply where that authority is the relevant appeal body)”.
- (4) After sub-paragraph (2) insert—

“(2ZA) But the complainant has no right of appeal if the complaint relates to a direction and control matter.”.

(5) In sub-paragraph (5), for “Commission” (in each place) substitute “relevant appeal body”.

(6) In sub-paragraph (6)—

- (a) for “Commission” (in the first place) substitute “relevant appeal body”;
- (b) after “any matter” insert “—
 - (a) in a case where the Commission is the relevant appeal body,”;
- (c) at the end insert “; and
 - (b) in a case where the appropriate authority is the relevant appeal body, that authority shall take such steps as it considers appropriate for securing that the complainant is properly informed.”.

(7) In sub-paragraph (7), for “sub-paragraph (6)” substitute “sub-paragraph (6)(a)”.

(8) In sub-paragraph (8)—

- (a) after “reconsidered,” insert “in a case where the Commission is the relevant appeal body”;
- (b) at the end of paragraph (b) insert “; and
 - in a case where the appropriate authority is the relevant appeal body, that authority shall re-investigate the complaint.”.

(9) In sub-paragraph (9)—

- (a) for “Commission” (in the first three places) substitute “relevant appeal body”;
- (b) for “considers appropriate, the Commission shall” substitute “considers appropriate—
 - (a) sub-paragraph (9ZA) applies if the Commission is the relevant appeal body; or
 - (b) sub-paragraph (9ZB) applies if the chief officer of police is the relevant appeal body.

(9ZA) The Commission shall—”.

(10) Before sub-paragraph (9A) insert—

“(9ZB) The chief officer of police shall take such action as the chief officer thinks appropriate in relation to the bringing of disciplinary proceedings in respect of the matters dealt with in the report.

(9ZC) If disciplinary proceedings are brought by virtue of sub-paragraph (9ZB), it shall be the duty of the appropriate authority to ensure that they are proceeded with to a proper conclusion.”.

(11) In sub-paragraph (9A)—

- (a) for “Commission” substitute “relevant appeal body”;
- (b) for “it shall direct the appropriate authority” substitute “in a case where the Commission is the relevant appeal body it shall direct the appropriate

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- authority to, or in a case where the appropriate authority is the relevant appeal body it shall”;
- (c) in sub-paragraph (a)—
 - (i) omit “to”;
 - (ii) omit “Commission’s”;
 - (d) in sub-paragraph (b), omit “to”.
- (12) In sub-paragraph (10)—
- (a) in the words before paragraph (a), for “Commission” substitute “relevant appeal body”;
 - (b) in sub-paragraph (a), after “authority” insert “(unless it is the relevant appeal body)”;
 - (c) in sub-paragraph (d), for “Commission” substitute “relevant appeal body”.
- (13) In sub-paragraph (11), for “The Commission” substitute “In a case where the Commission is the relevant appeal body, it”.
- (14) In sub-paragraph (13), for “Commission” substitute “relevant appeal body”.
- 21 In paragraph 29 (minor definitions), before the definition of “gross misconduct” insert—
- ““direction and control matter” means a matter that relates to the direction and control of a police force by—
- (a) the chief officer of police of that force, or
 - (b) a person for the time being carrying out the functions of the chief officer of police of that force;”.
- 22 After paragraph 29 insert—
- “Appeals: the relevant appeal body*
- 30 (1) The relevant appeal body in relation to an appeal is—
- (a) the Commission, in a case where the relevant complaint falls within a description of complaints specified in regulations made by the Secretary of State for the purposes of this paragraph; or
 - (b) the chief officer of police who is the appropriate authority in relation to the relevant complaint, in any other case.
- (2) In this paragraph and paragraphs 31 and 32—
- “appeal” means an appeal under paragraph 7(8), 8A, 21(7) or 25(2);
- “relevant complaint”, in relation to an appeal, means the complaint to which the appeal relates.
- 31 (1) This paragraph applies in a case where—
- (a) an appeal is made to the Commission, and
 - (b) the appropriate authority is the relevant appeal body in relation to the appeal.
- (2) The Commission must—
- (a) forward the appeal to the appropriate authority; and
 - (b) notify the person who made the appeal—

- (i) that the appropriate authority is the relevant appeal body; and
 - (ii) the appeal has been forwarded.
 - (3) The appeal is to be taken to have been—
 - (a) made to the appropriate authority, and
 - (b) so made at the time when it is forwarded to the appropriate authority.
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 - (1) This paragraph applies in a case where—
 - (a) an appeal is made to the appropriate authority; and
 - (b) the Commission is the relevant appeal body in relation to the appeal.
 - (2) The appropriate authority must—
 - (a) forward the appeal to the Commission; and
 - (b) notify the person who made the appeal—
 - (i) that the Commission is the relevant appeal body; and
 - (ii) the appeal has been forwarded.
 - (3) The appeal is to be taken to have been—
 - (a) made to the Commission; and
 - (b) so made at the time when it is forwarded to the Commission.”.